

The CASE of Sir JOHN EDWARDS, Knight, Appellant from a Decree made in the High and Honourable Court of Chancery, in a Cause there Depending, wherein Mary Howard, Widow, was Plaintiff, and the Appellant was Defendant :

Humbly Offered to the Consideration of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

HENRY HOWARD, Esq; being seiz'd in Fee of the Honour of *Clene*, the Mannor of *Bucknill*, and of other Mannors and Lands in the County of *Salop*, the 12th day of *January* 1669; after his Marriage with the Respondit, did settle part of the Premises of the value of 500 *l. per ann.* upon her for her Joynture; and the 7th day of *December* following did make her a voluntary additional Settlement of other Lands, worth (if in possession) 1500 *l. per annum* more. *Henry Howard* afterwards, viz. the 10th day of *July* 1671, sold to the Appellant for a full and valuable Consideration, really paid the Reversion after three Lives of three Tenements in *Bucknill*; which unknown to the Appellant, were in the aforesaid voluntary and additional Settlement, and of two small Tenements in the Forreſt of *Clene*, which were not in that voluntary additional Settlement. All which said Premises, were an absolute purchase, without any power of Redemption, either by Word or Writing. Which Premises so purchased by the Appellant (to save charges, and to protect them by Collateral security from incumbrances) were included in the same conveyance with other Lands about that time contracted for by one Mr. *Edward Powell*, with the same Mr. *Howard*; but the Contracts were severall, and the Tenements purchased by the Appellant, were by the said *P. m. l.* immediately to be conveyed to the Appellant and his Heirs; and a Draught for that purpose was then prepared, and agreed on, and afterwards was executed by the said *Powell*.

The said Mr. *Powell* voluntarily gave Mr. *Howard* a Note to admit him to re-purchase the Premises by him the said *Powell* contracted for and purchased. Mr. *Howard*, after he had supplied his occasions with the said Purchase money, prefer'd his Bill in Chancery against *Powell*, and the Appellant to have Redemption from them both, of the Lands by them severally purchased, upon pretence that the said Note given by *Powell*, did amount to an agreement, that Mr. *Howard* might re-purchase the same, and Mr. *Howard* would therein have included the Lands purchased by the Appellant. But it appearing that the Appellants purchase was a distinct purchase from *Powells*, and so not to be affected with *Powell's* Note, That Bill was dismiss'd, and then Mr. *Howard* exhibited a new Bill against *Powell* alone to redeem the same; who submitting thereto the 6th of *July*, 25 *Car. 2d.*, the same was decreed accordingly, but without prejudice as to the Premises purchased by the Appellant.

In *November* 1673, Mr. *Henry Howard* dyed, and the Appellant having, as he was, and is advised, an absolute and irredeemable Estate in the Premises, and conceiving himself at peace and quiet, did in consideration of a Marriage and Portion, received with his new Wife, absolutely settle the said Lands in *Bucknill* (*inter alia*) upon Sir *Edward Harley*, Knight of the Bath, and *Robert Beale*, Esq; in Trust for the Appellants Wife for part of her Joynture, and afterwards to the Use of the Heirs Male of their two bodies, and charged with Portions for younger Children; That the Respondit *Mary Howard*, Relict of the aforesaid *Henry Howard*, deceased, claiming part of the Premises, as being compriz'd in her said voluntary additional Settlement, made as aforesaid, brought her Bill in Chancery against the Appellant for a Re-conveyance of all the whole Premises, and a Redemption thereof, though absolutely bought and purchased by him, and settled for a valuable consideration as aforesaid, on pretence, that the Appellants having accepted of a conveyance from *Powell*; and being privy to *Powells* giving the aforesaid Note, and not opposing the same, ought to be affected thereby.

Whereas,

1^{ly}, The Appellants Purchase and Contract was distinct from that of Mr. *Powells*; the Purchases were treated for severally, and severally paid for.

2^{ly}, Mr. *Powell* only agreed to admit Mr. *Howard* to re-purchase what he himself had contracted for, and so the Appellants purchase not comprehended in that Note.

3^{ly}, The Premises purchased by the Appellant, not being included in *Powells* Note; therefore, though the Appellant was present when the Note was given, yet had he no reason to oppose it, or to desire that to be excluded, which, in truth, was never included therein.

4^{ly}, The Note given by Mr. *Powell*, was voluntary, and he hath sworn expressly it was so; and that it was to extend only to his own purchase, and not to the Appellants.

5^{ly}, To make a Construction, that the Appellants Lands should be redeemable, because *Powell* so agreed for his own, is not only against the truth, but a construction contrary to all common sense and understanding: For can any man think it probable, that the Appellant would part with his money, and take only a security of a dry Reversion, after three Lives in being, for the same? Out of what could he expect to be paid his Interest? It would be worthy of enquiry, Whether ever any man lent his money upon a dry Reversion, after three Lives, without something in possession, that might answer his Interest, or some Collateral security for the same?

6^{ly}, The money paid by the Appellant, was the full value of the Reversions, considering the Lives then in being.

7^{ly}, The Appellant on presumption, that this absolute purchase of his, was only a Mortgage, is decreed to re-convey the same free from incumbrances, which is absolutely impossible for him to do, he having for a valuable consideration settled the same on his Wife and Children, as aforesaid; so that it is out of his power to perform the Decree, and consequently his Person decreed to perpetual Imprisonment.

8^{ly}, The Respondit is admitted to a Redemption of all the Five Tenements aforesaid; whereas (were the Appellants title but a Mortgage, yet hath she title only to three of them) none of them being in her Joynture, and there being but three of them in her additional voluntary Settlement, the equity of Redemption of the other two (if redeemable at all) being in another person, viz. Mr. *Walcott*, who purchased *Clene*, whereof those Tenements are a part, who is neither Plaintiff nor Defendant, and to whose prosecution the Appellant is equally lyable.

9^{ly}, The Respondit is relieved by the said Decree, upon a voluntary conveyance against the Appellant, who is a Purchaser for a full and valuable consideration, and upon account stated by the Master in Chancery, according to the Respondits own values in proofs; the money now due to the Appellant, is more then the Reversions are worth, if now to be sold, although severall of the Lives are dead since the purchase; so that the Decree is purely obtain'd for vexation, and can be in no case for the Respondits advantage, yet Decrees an impossibility to be performed; and if not performed, the Appellants person is lyable to perpetual Imprisonment, as aforesaid.

10^{ly}, That the Appellant having the conveyance of the Reversion in his own Name, his Estates for three Lives are Merg'd; which is an evidence of an absolute Purchase, not a Mortgage.

All which is most humbly submitted to the Wisdom and grave Consideration of this Supreme Fountain of Justice, your Lordships in Parliament Assembled. And the Appellant humbly prays Relief according to Justice, and that the Decree aforesaid may stand reversed.